

REMARKS

In response to the Office Action dated September 22, 2010, the Assignee respectfully requests reconsideration based on the above amendments and on the following remarks.

Claims 48-53, 58-60, 63, and 68-73 are pending in this application. Claims 54-57, 61-62, 64-67, and 74-77 have been, or were previously, canceled without prejudice or disclaimer. Claims 1-47 were also previously canceled without prejudice or disclaimer.

Rejection of Claims under § 101

Claims 68-73 were rejected under 35 U.S.C. § 101 for claiming non-statutory subject matter.

This rejection has been rendered moot by amendment. Independent claim 68 has been amended to recite a “*device storing processor executable instructions*” (emphasis added). Support for these features may be found at least in the as-filed application at paragraph [0047] (explaining the “computer-readable medium can be a device that stores digital information”). Dependent claims 69-73 have been similarly amended. Claims 68-73 thus fully comply with the “machine-or-transformation” test. *See In re Bilski*, 545 F. 3d 943, 954 (Fed. Cir. 2008). *See also Bilski et al. v. Kappos* (No. 08-964, June 28, 2010).

Rejection of Claims under § 102 (e)

The Office rejected claims 48, 52-53, 58, and 61-63 under 35 U.S.C. § 102 (e) as being anticipated by U.S. Patent Application Publication 2002/0194586 to Gutta, *et al.*

This rejection has been rendered moot by amendment. These claims have been amended recite, or to incorporate, many features that are not disclosed or suggested by Gutta ‘586. Independent claim 48, for example, has been amended to recite features similar to independent

claim 68. Independent claim 48 now recites “*determining which of the two or more conflicting actions was first triggered*” and “*selecting a first triggered action as a predominate action to resolve the two or more conflicting actions.*” Support for these features may be found at least in the as-filed application at paragraph [0041]. Independent claim 58 has been similarly amended.

Gutta ‘586 does not anticipate these features. As the Assignee previously explained, when *Gutta* ‘586 detects multiple users, *Gutta* ‘586 creates a “composite user profile based on the profiles” of each of the users. See U.S. Patent Application Publication 2002/0194586 to *Gutta, et al.* at paragraph [0020] (emphasis added). Alternatively, some users may have greater weightings, or a “majority rule” may be implemented. See *id.* at paragraph [0029]. Regardless, *Gutta* ‘586 is silent to “*determining which of the two or more conflicting actions was first triggered*” and to “*selecting a first triggered action as a predominate action to resolve the two or more conflicting actions.*” *Gutta* ‘586, then, cannot anticipate all the features of independent claims 48 and 58.

Claims 48, 52-53, 58, and 61-63, then, cannot be anticipated by *Gutta* ‘586. Independent claims 48 and 58 recite many features that are not disclosed or suggested by *Gutta* ‘586. Their respective dependent claims incorporate these same features and recite additional features. These claims, then, cannot be anticipated, so the Office is respectfully requested to remove the § 102 (b) rejection of these claims.

Rejection of Claims 49-50 & 59-60 under § 103 (a)

Claims 49-50 and 59-60 were rejected under 35 U.S.C. § 103 (a) as being obvious over *Gutta* ‘586 in view of U.S. Patent Application Publication 2002/0144259 to *Gutta, et al.* (hereinafter *Gutta* ‘259).

These claims, though, cannot be obvious. These claims depend from either independent claim 48 or 58. These claims, then, incorporate the same distinguishing features discussed above. As the above paragraphs explained, *Gutta* ‘586 fails to teach or suggest all the features of

the independent claims, and *Gutta* '259 does not cure the deficiencies. As the Assignee has also explained, *Gutta* '259 uses audio/visual devices to detect a user. See U.S. Patent Application Publication 2002/0144259 to Gutta, *et al.* at paragraphs [0005], [0012], and [0018]. When users are detected, a composite profile is created. See *id.* at paragraph [0020]. The proposed combination of *Gutta* '586 with *Gutta* '259 still creates a "composite user profile," which would NOT "*determin[e] which of the two or more conflicting actions was first triggered*" and select "*a first triggered action as a predominate action to resolve the two or more conflicting actions*," as independent claims 48 or 58 recite. One of ordinary skill in the art, then, would not think that claims 49-50 and 59-60 are obvious. The Office is respectfully requested to remove the § 103 (a) rejection of these claims.

Rejection of Claim 51 under § 103 (a)

Claim 51 was rejected under 35 U.S.C. § 103 (a) as being obvious over *Gutta* '586 with *Gutta* '259 and further in view of U.S. Patent 6,317,882 to Robbins. Claim 51, though, also depends from independent claim 48. Claim 51, then incorporates the same distinguishing features. As the above paragraphs explained, *Gutta* '586 with *Gutta* '259 fails to teach or suggest all the features of independent claim 48, and *Robbins* does not cure the deficiencies. The proposed combination of *Gutta* '586 with *Gutta* '259 and *Robbins* still creates a "composite user profile," which would NOT "*determin[e] which of the two or more conflicting actions was first triggered*" and select "*a first triggered action as a predominate action to resolve the two or more conflicting actions*," as independent claim 48 recites. One of ordinary skill in the art, then, would not think that claim 51 is obvious. The Office is respectfully requested to remove the § 103 (a) rejection of this claim.

Rejection of Claim 68 under § 103 (a)

Claim 68 was rejected under 35 U.S.C. § 103 (a) as being obvious over *Gutta* '586 in view of U.S. Patent 7,137,119 to Sankaranarayan, *et al.*

The rejection is mistaken. This is a rare instance where Examiner Van Handel has, very respectfully, misinterpreted *Sankaranarayan*. Examiner Van Handel asserts that the proposed combination of *Gutta* '586 with *Sankaranarayan* teaches “*determining which of the two or more conflicting actions was first triggered*” and “*selecting a first triggered action as a predominate action to resolve the two or more conflicting actions.*” Examiner Van Handel even cites to specific portions of *Sankaranarayan*. But when *Sankaranarayan* is correctly interpreted, the proposed combination of *Gutta* '586 with *Sankaranarayan* does not teach or suggest at least these features. *Gutta* '586 with *Sankaranarayan*, for example, explains that resources are allocated based on priority. As the below paragraphs explain, Examiner Van Handel has, very respectfully, misinterpreted *Sankaranarayan*'s priority-based allocations with the “*selecti[on of] a first triggered action .. to resolve the two or more conflicting actions.*” When *Sankaranarayan* is correctly interpreted, claim 68 cannot be obvious over *Gutta* '586 with *Sankaranarayan*.

The proposed combination of *Gutta* '586 with *Sankaranarayan* describes a resource manager. See U.S. Patent 7,137,119 to Sankaranarayan, *et al.* at column 2, lines 9-10. The resource manager arbitrates access to computer resources. See *id.* at column 2, lines 14-16. For example, a TV-enabled computer only has a single tuner. See *id.* at column 4, lines 56-58. The tuner may only tune to a single channel at a time, so the computer cannot accommodate viewing a show and recording a different show. See *id.* at column 4, line 65 through column 5, line 3. The resource manager thus uses a “conflict resolution mechanism” that is “priority based” or based on “load balancing.” See *id.* at column 9, lines 32-45.

Sankaranarayan expressly explains that the “priority-based strategy allocates resources based on which applications and/or users have priority over others.” See U.S. Patent 7,137,119 to Sankaranarayan, *et al.* at column 14, lines 42-43. Examiner Van Handel specifically cites to *Sankaranarayan*'s column 16 and FIG. 7, which explains a situation when an “existing activity” has higher priority than a newly-requested activity:

In the FIG. 7 case, **the existing activity A1 has the highest priority and the new activity A2 seeking to be added has the lowest priority (i.e., $A1 > A2$)**. According to the priority-based preemption process of FIG. 6, the resource manager runs the “resource calculation” on A1

first by contacting the resource provider identified by descriptor R.sub.1. As described in the "resource calculation" method earlier, the provider adds the amount of resource required by this descriptor to the accumulator. The new value of accumulator becomes 1. The provider compares the accumulator value to the total amount of resources it has (1 in this case) and indicates to the resource manager it can satisfy the amount. The resource manager repeats the same protocol for activity A2 with the "accumulator" initialized to 1. The provider adds the amount of resources required for activity A2 (step 602 in FIG. 6) to contents of the accumulator and finds it exceeds the total amount of resources that it has. **The resource provider returns a notice that it cannot satisfy the request given its current allocation** (steps 604 and 608). The resource manager then evaluates whether there is any lower priority activity that is currently using the requested resource (step 610). **In this case, the current user of the resource is the existing activity A1, which has a higher priority than that of the new activity A2. Accordingly, the resource manager informs the new activity that its configuration cannot be satisfied at this time** (steps 612 and 614).

See U.S. Patent 7,137,119 to Sankaranarayan, *et al.* at column 16, lines 30-55 (emphasis added). Here *Sankaranarayan* explains that the "existing activity A1 ... has a higher priority," and the newly requested activity "A2" cannot be satisfied. So, *Sankaranarayan* did not select the "*first triggered action*" to resolve the conflict, as Examiner Van Handel asserts. *Sankaranarayan*, instead, selected the "existing activity" because it had a higher priority. Examiner Van Handel has thus misinterpreted *Sankaranarayan's* teachings.

Indeed, *Sankaranarayan's* FIG. 8 further supports the Assignee. *Sankaranarayan's* FIG. 8 illustrates the situation where "the new activity has a higher priority than the existing activity." See U.S. Patent 7,137,119 to Sankaranarayan, *et al.* at column 16, lines 57-58. The resource cannot accommodate both tasks, so **"the resource manager sends a preemption notice to the lower priority activity A1 (steps 616) and allows the lower priority activity to stop or complete (step 618)."** See *id.* at column 17, lines 8-11 (emphasis added). The new, higher-priority, activity is then allocated the resources. See *id.* at column 17, lines 11-13. **Here, then, the existing, lower-priority activity is "victimiz[ed] ... for the sake of a higher priority new activity."** See *id.* at column 17, lines 13-17 (emphasis added).

Examiner Van Handel has thus, very respectfully, misinterpreted the proposed combination of *Gutta* '586 with *Sankaranarayan*. The proposed combination of *Gutta* '586 with *Sankaranarayan* arbitrates based on priority. The passages cited by Examiner Van Handel explain how an existing, higher priority task is maintained when a lower priority task cannot be accommodated. The proposed combination of *Gutta* '586 with *Sankaranarayan* is, quite simply, entirely silent to “*determining which of the two or more conflicting actions was first triggered*” and “*selecting a first triggered action as a predominate action to resolve the two or more conflicting actions.*” Any other conclusion is unreasonable.

Independent claim 68, then, cannot be obvious. Independent claim 68 recites many features that are not taught, suggested, or even contemplated by *Gutta* '586 with *Sankaranarayan*. One of ordinary skill in the art, then, would not think that claim 68 is obvious. The Office is respectfully requested to remove the § 103 (a) rejection of this claim.

Rejection of Claims 69-72 under § 103 (a)

Claims 69-72 were rejected under 35 U.S.C. § 103 (a) as being obvious over *Gutta* '586 in view of *Sankaranarayan* and further in view of *Gutta* '259. Claims 69-72, though depend from independent claim 68. As the above paragraphs explain, the proposed combination of *Gutta* '586 with *Sankaranarayan* and *Gutta* '259 arbitrates based on priority. Independent claim 68, instead, “*determin[es] which of the two or more conflicting actions was first triggered*” and “*select[s] a first triggered action as a predominate action to resolve the two or more conflicting actions.*” These features are simply not taught, suggested, or even contemplated by *Gutta* '586 with *Sankaranarayan* and *Gutta* '259. One of ordinary skill in the art, then, would not think that claims 69-72 are obvious, so the Office is respectfully requested to remove the § 103 (a) rejection of these claims.

Rejection of Claim 73 under § 103 (a)

Claim 73 was also rejected under 35 U.S.C. § 103 (a) as being obvious over *Gutta* '586 in view of *Sankaranarayan*. Because claim 73 depends from independent claim 68, claim 73 incorporates the same distinguishing features discussed above. The Office is respectfully requested to remove the § 103 (a) rejection of this claim.

If any questions arise, the Office is requested to contact the undersigned at (919) 469-2629 or scott@scottzimmerman.com.

37 C.F.R. § 1.8 CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being electronically transmitted via the USPTO EFS web interface on December 3, 2010.

A handwritten signature in black ink, appearing to read 'Scott P. Zimmerman', is written over a series of horizontal lines.

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